IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1615 of 2006

JYOTI PRAKASH
V/S
SAMASTHA GHANCHHA SAMAJ

Mr. MR SINGHVI, for the appellant / petitioner

Mr. J.GEHLOT for Mr. DK PARIHAR, for the respondent

Date of Order : 6.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The appellant seeks to challenge the order of the learned trial court dt. 26.9.2006; whereby the defence of the appellant, against eviction, has been struck off.

The relevant facts are, that the plaintiff filed a suit for eviction, on the basis of second default, and for determination of standard rent, wherein the learned trial court, vide order dt. 23.8.2005, made determination under Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, at the agreed rate, for the period upto the date of filing of the suit, and in the same order made determination of provisional rent, under Section 7 of the Act, @ Rs. 3000/- per month, to be effective from 1.3.2002, and directed the amount to be paid to the

plaintiff, or to deposit in the Court, within a period of 15 days. Then, during pendency of the suit, when the appellant did not pay the rent, in compliance of the order dt. 23.8.2005, the plaintiff filed an application under Section 13(5), on 22.7.2006, for striking out the defence. The appellant also filed an application, on the same day, under Section 151 C.P.C.

The case of the appellant is, that the rent upto end of Feb., 2006 has already been paid to the plaintiff's counsel, and suddenly, the counsel Shri A.R. Mehta expired on 3.4.2006. Therefore, the rent for the month of March, 2006 could not be paid, and was sent by money order, which was refused. Then, the appellant asked the plaintiff to inform the bank account, which information has also not been furnished, and therefore, the defence cannot be struck out.

The learned trial court found, that the appellant has not paid rent after 31.3.2006. It has been found, that if nobody was taking rent on behalf of the plaintiff, then it was his duty to deposit the rent in the Court, by tender, but he has not deposited the same. With this it has been observed, that by not so making payment, the defendant has made second default. However, the defence of the appellant against eviction has been struck off.

It was contended by the learned counsel for the appellant, that since the order dt. 23.8.2005 was a composite order, under Section 13(3), so also under Section 7, and consequence of not depositing the rent determined under Section 7 is, that it only constitutes default under Section 13(1)(a), and on that ground, defence cannot be struck out. The other argument is, that in that view of the matter, the appellant was entitled to save his defence from being struck off, on not complying with the part of the order under Section 7(3), whereunder the rent was also determined under Section 13(3), and if that is considered, he has already paid rent, much more than the amount, @ determined under section 13(3), and therefore, the defence could not be struck off. The last argument made was, that since the rent was being received by the counsel, and the counsel suddenly expired, and immediately within permissible period, the appellant made payment of rent by money order, which was refused, then the bank account numbers were also asked, but were not furnished, as such the defence cannot be struck off.

I have considered the submissions.

In my view, the order dt. 23.8.2005, is a composite order under Section 13(3) and section 7, and since the provisional rent was made effective from 1.3.2002, the order has been framed in two parts, but then,

the future liability to pay the rent, @ Rs. 3000/- per month was attracted against the appellant, wherein the liability to pay the rent at agreed rate merged. If the argument of the learned counsel for the appellant is considered in detail, what would come out is, that according to Section 13(4), the tenant is to pay the amount determined under Section 13(3), within the time permitted, and is to continue to pay the landlord month by month or deposit in the Court, rent for the subsequent period month by month, at the rate at, which the rent was determined by the Court under Sub-Section (3). While according to Section 7 the provisional rent is to remain binding on all parties concerned, and shall remain in force, till a decree fixing the standard rent therefor is finally made, in such suit. Obviously if the two provisions are given effect independently, it may result in attracting dual liability of the appellant; one to pay the rent determined under Section 7, and the other to pay rent determined under Section 13(3), which obviously would be wholly unjust. In such circumstances, the two provisions are required to be considered harmoniously, and the obvious consequence is, that the two rates of rent, merged together, and attracted a composite liability on the tenant, to continue to pay rent month by month, at the rate so determined, i.e. Rs. 3,000/- per month.

May be, that consequence of non depositing of

provisional rent, under Section 7 is provided to be constituting default, within the meaning of Section 13(1)(a), but then, that does not entitle the appellant to successfully oppose the application under Section 13(5).

It may be comprehended, that for the purpose of attracting the provisions of Section 7, it is not necessary that the suit is a suit based on default, or even it is not required to be suit for eviction either, while for attracting Section 13(5), it has to be suit for default. In such circumstances, the scope of liability of attracting of Section 7, does not have the effect of obliterating the liability, attracting against the tenant under Section 13(5). Admittedly, rent since 1.4.2006 has not been paid, and it is informed by the learned counsel, that it was deposited in the Court in October, 2006, in view of the judgment of Hon'ble the Supreme Court, in Nasiruddin Vs. Sita Ram Agrawal, reported in 2003 DNJ (SC)-180, since the provisions of Section 5 of the Limitation Act does not apply, the learned trial court was right in striking out the defence.

Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily. Record of the learned trial court be returned forthwith.

(N P GUPTA),J.

/sushil/